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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053298
Party	Defendant Kimberly Kearney
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Submission	Other Motions/Papers
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Signature	/Kimberly Kearney/
Date	09/13/2013
Attachments	RESPONSE TO PLAINTIFF OPTION TO MOTION TO EXTEND.pdf(205651 bytes) Proof of email To Tyler Proposing Settlement.pdf(334420 bytes) 2nd Request To Depose Tyler Perry.pdf(397407 bytes) Tyler's Attorney Response To Deposition Request.pdf(175839 bytes)

In The United States Patent And Trademark Office
Before the Trademark Trial And Appeal Board

Defendant's Response To Plaintiff's Opposition
To Defendant's Motion To Extend Testimony Period

Tyler Perry Studios,

Plaintiff

Vs.

Kim Kearney,

Defendant

I, Kimberly Kearney, Defendant, in defense of this cancellation motion, am submitting my responses to the Plaintiff's motion to oppose my request to extend my testimony period.

As clearly stated in my motion to extend my testimony period, my only intention is to have adequate time to subpoena witnesses whose statements will support my defense and my written evidence, of my legal and valid registration of my mark.

Firstly, the notion that I would even desire to use the deposition of Tyler Perry as a ruse to "pitch" my show to him, is absolutely absurd! I don't want, nor need to pitch my show to him, he has already been pitched. This fiasco is a result of my ALREADY having pitched my show to him in 2008. He saw the treatment to my show, considered it, and then tried to steal it from me! The only thing I want from this man is for him to leave me, my trademark, and my show alone, and stop trying to steal from me as he's done with so many other up and coming people in the industry! This accusation by his attorney, that I want to actually pitch my show to him, is as ridiculous as a woman going on a date with a man who raped her. And yes I do mean rape, because this is how it feels to have someone you trusted, respected and admired, betray you, and try to take what God has given you, by deceit and by force! I presented my show to Tyler Perry already in good faith, and have written evidence to prove that. I had no intention EVER of even coming to the deposition. I have no desire to even see the face of this evil tyrant in person, who pretends to be an upstanding Christian man, but has tried to steal my intellectual property for a Christian tv show, and has made my life a living hell for several years now. Who would?

But I do want him deposed, so he will have to disclose pertinent knowledge he has regarding this case. And no matter how rich & famous he may be, he is NOT ABOVE THE LAW. So I have a legal right to have him deposed. He may not be the Plaintiff Of Record, but he is the owner of the company, who facilitated this proceeding and is also the one from the company who has direct knowledge that he needs to be addressed in this proceeding. He started this case by filing this absurd cancellation of my mark –not once, but twice now, after being privy to my intellectual property directly. The least he can do is stand up, be accountable, and testify.

I have arranged with a legal deposition service based in his place of business, Atlanta, who was prepared to go to his office and swear him in, depose him, and prepare the transcript to present to the board. I had no other choice but to hire a private service, since I don't have a trademark attorney. Any attorney I found with the guts to fight this tyrant on my behalf, has asked for huge retainers I can't afford. I did not wait until the testimony period to seek help as Mr. Sapphire alleges. I searched both before, and during the testimony period for legal help, and after realizing that I still could not secure an attorney to help me, nor willing to just take the depositions for me, which I am not legally ALLOWED to do myself because of the swearing in element, I finally found a deposition company who agreed to help me in spite of my not having counsel which up to that point no-one else would. And they were prepared to accommodate Mr. Perry's schedule and depose him at his own office, whenever it was convenient for him. That is why I requested for his legal representative to provide a date when Mr. Perry would be available, as long as it was within my testimony period. The deposition company said they could work within a fairly short notice. So if he had agreed to a date even when he received my 2nd email, they would have had someone available, and he could have been deposed still within the testimony period, but his attorney still won't consent, forcing me to need to time to subpoena him.

I never expected the Plaintiff's attorney to refuse to have Mr. Perry testify, because if he is not doing anything wrong, and doesn't think he has knowledge that would help my defense, what does he have to hide? The truth is, they don't want Mr. Perry to testify because he would then risk perjuring himself if he did not acknowledge that this show has already been pitched to him in writing, he had already seen the treatment to my show, bearing my mark, with documents supporting its use in commerce, before he even applied for it, and my presentation is what triggered his interest and/or application for the name. And his filing of the application for my mark, was unethical, unprofessional, deceitful and unbecoming, of anyone who professes Christianity as he does.

I tried calling Mr. Sapphire first to schedule Mr. Perry's deposition. But both times when I called, I was told by the receptionist that the Plaintiff's attorney, Victor Sapphire was not available, and I did not leave a phone number, because I did not want these people to have my phone number, and unfortunately, I don't have legal counsel to serve as a buffer. I do not trust them, and I know for a fact that another person who exposed Mr. Perry, for being gay via youtube, mysteriously ended up with his face sliced open, shortly thereafter. See link here: <http://celebnmusic247.com/tyler-perry-goons-beat-dude-up/#sthash.hafVa6Du.dpbs> this is all over the public media.

So I am trying to limit these people's access to my personal information, because I don't know what they are capable of, and I honestly don't feel safe dealing with them, outside of email. This is another reason I don't want to be at the deposition, though this man pretends to be Godly, there is something very sinister and suspect about him, and I know the other witnesses have to be forced by subpoena to testify as well, because they're afraid of him too!

It was after I could not reach the Plaintiff's counsel by phone, that I attempted to reach him by email, a copy of which is attached again, as it was included in my Motion To Extend. I clearly proposed we do a shared use of the mark just to keep the peace, and that I WAS NOT ASKING FOR ANY MONEY, but offered to share "my mark" at NO COST, with the Plaintiff just to resolve this matter.

So Plaintiff's attorney's continued accusations in his response to my motion, that my actions are motivated my money, is both a slanderous lie and an insult. I offered to share "MY" registered trademark, which is rightfully mine, with someone who was trying steal it from me, for FREE! I don't know any other greater way to show my humility and sincere desire to resolve this matter, and do God's work only for good, than that. Most people would have asked for money, I NEVER DID! I asked for compromise & peace only! And all I got in return was a reply, set up to mislead me to believe they were considering my offer, while they continued to try to use legalities with the board to still steal my mark. These people are treacherous and relentless.

The truth is that the attorney, Victor Sapphire has used his legal knowledge and trickery to try to cause me to lose this case. If you notice in his email reply to my proposal settlement, he said "my offer was being considered". And again I NEVER REQUESTED ANY MONEY, the email clearly says that I don't want any money from him, I was offering to GIVE TYLER PERRY USE and to SHARE MY MARK with him, again showing my integrity, ethics, and sincere desire to settle this matter and that my motivation for using this mark is not even for my own financial gain, unlike him, but only for my mission to God's work.

Meanwhile, the Plaintiff's counsel never replied to my request with a date to depose Mr. Perry as I asked in the email, nor did he provide an answer as to whether the Plaintiff was accepting or rejecting my proposed settlement, and still has not provided answers to this date. His statement that my offer was being considered, was simply a stall tactic, while he continued, to contact the board, and try to block my request for an extension for the testimony period, so I run out of time for the Testimony period, and wouldn't have time to subpoena his client and force him to testify. This man is just evil just like his client, every move is calculated and conniving.

It was not until I received the email response from his attorney, Victor Sapphire, that I realized Tyler Perry may refuse to testify and would require a subpoena. So Mr. Sapphire's allegation as to why I had not filed a subpoena earlier in the Testimony Period or before it began is easily addressed. I didn't subpoena him before, because I expected this so called "up-standing" individual, with nothing to hide, to testify voluntarily, especially considering he initiated this proceeding in the first place! Why would he initiate this proceeding, and then refuse to participate? It's because he never expected it to go this far, he expected me to let him bully me out of my trademark and intellectual property via his ruthless attorney, as they have done with so many others. Look at the history in your own USPTO records, and you will see that Mr. Perry

and his attorney have forced numerous people out of their marks w/these bullying tactics.

I called Victor Sapphire's office on two separate occasions which I could show the board my phone records (but would only do so in strict confidence and don't want this available to the Plaintiff), before sending an email proposing a settlement between us where I would share my mark, and requesting a date for his availability if he was not willing to settle. THIS EMAIL NEVER INCLUDED A REQUEST FOR PAYMENT (you can see it attached-as it was also in my Motion to Extend.

I also wanted to depose other witnesses who would also testify as to my use of the mark, their knowledge that Tyler Perry was in receipt of my show materials bearing my mark, and they also had seen documents which support the written evidence I intended to provide with the witnesses testimony transcripts. All of the evidence I have was to be supported by witnesses' testimonies. I intended to provide their testimony WITH my EVIDENCE aka the documents, as exhibits. At least, that's how it seems to be done on court shows. Again, I don't have an attorney, so this approached seemed logical and made sense to me, support the evidence with testimony from real witnesses. Remember, I am trying to refute the fact that my Response to the Admissions, that were not accepted, though the Admissions provided by the Plaintiff were TOTALLY INACCURATE, just because I didn't understand when they were due, so I need the testimony period and these witness testimonies to defend my case.

The processor I hired, however, said witnesses were being elusive and some, have to be found in order to be served the subpoena, and therefore, he needed more time. Another key witness who has worked extensively with the plaintiff agreed to write an affidavit that could be included as evidence, and then refused to do so just before my testimony period, and now refuses to testify w/o be subpoenaed, because he fears backlash from the plaintiff.

The plaintiff's attorney keeps trying to trick you into believing I have a legal team, when I referenced "we" in other docs, I was referring to other people who work with me in my company, tv production people. NOT one person who works with me has any legal or trademark background. And the only attorney whoever tried to help me once in the beginning, was only a friend, not my attorney in this case. He tried to help and intervene since he knew how distraught I was, by calling the Plaintiff's attorney to see if they wanted to try and settle the matter, which again the Plaintiff's attorney pretended to be considering that, and then NEVER replied, another stall tactic by the way. My friend/entertainment attorney does ONLY ENTERTAINMENT LAW, and acknowledges he COULD NOT GIVE ME ANY HELP W/TRADEMARK LAW. So he never assisted me with any matters regarding this case except making a phone call on my behalf hoping the trademark case could be settled without the trial proceeding. When the Plaintiff's attorney failed to ever follow-up, with a settlement offer as he said he would to the entertainment attorney, my friend/entertainment attorney then recommended a TRADEMARK attorney to me, saying he knew he was in no position to guide, advise or represent me, because he was totally unfamiliar with this area of law.

I contacted his referral, and could not afford the retainer they proposed once I disclosed to them that the Plaintiff was Tyler Perry. Everyone knows the plaintiff is worth hundreds of millions of dollars, and will and can afford to drag this out. They all feel without a huge retainer upfront from me, they may never get paid for the amount of work required since I am not wealthy like the plaintiff by any stretch of the imagination. This is why regardless of anyone's advice I still don't have counsel. I have reached out for pro-bono representation, college law programs, you name it. No-one wants to fight this tyrant and risk the professional backlash for their firm, without me guaranteeing them a lot of money. No-one wants to fight Goliath for free, so I'm just like David, on my own with this little rock, called "THE TRUTH"! And to say I had legal counsel in this case because I said "we" referring to my production company, and had a friend who does not practice trademark law, but only entertainment law, just try to intervene by calling the plaintiff's attorney is ridiculous. I should not be treated like I have LEGAL COUNSEL, qualified to help me because a friend is an entertainment attorney, no more than a person needing brain surgery would be required to consider a DENTIST qualified to perform a life-saving operation. THIS AGAIN is a smokescreen by the Plaintiff to make the board think I have help, which I DO NOT HAVE. This is one woman, me, fighting for what's right, reading every case she can find, and reading the trademark manual to defend her legal right to her trademark. IT'S JUST ME, always has been. God knows I wish I had some help! I've never been more stressed or mentally and emotionally drained in my life!

Yet, the plaintiff, thinks he can hide behind his legal team and do to me, what he has done to so many others, by just bullying them out of their ideas and intellectual properties, because he is wealthy and famous. He is one of the richest men in the entertainment industry, and has been sued more than 4 times in the last 2 years alone for doing to others, exactly what he is doing to me. So it is not without reason, that it would be a challenge for anyone, including myself who does not have legal representation still, to find it

necessary to force witnesses to testify by subpoena. They, just like most people, are intimidated by the Plaintiff, and his influence in the entertainment industry.

Here are links to several cases against this Plaintiff for the same type of infringements, at least the ones that I'm aware of, though I'm sure there are more, including a case filed by the writer's guild on behalf of Tyler Perry's writers, who he illegally fired for standing up for their rights to be paid for their creative works on over 100 episodes of shows for him! But, they had the Writer's Guild to help them, I have NO-ONE!

You can copy and paste these links in your browser and see for yourself. And though the Plaintiff and his legal team have bullied and connived their way out of some of these cases, where there's smoke there is fire. And don't believe for a second this man would constantly have people suing him for copyright infringement, and theft of their intellectual property if there was no truth in it. How many coincidences does it take to notice a pattern?

See below:

Tyler Perry – Sued AGAIN for copyright infringement!

<http://ipowerrichmond.com/2636300/tyler-perry-gets-another-copy-infringement-lawsuit/>

Tyler Perry Sued By Writer's Guild On Behalf Of Writers Who Helped Him Make Millions

<http://www.deadline.com/2008/10/writers-at-tyler-perry-studio-to-take-strike-action-will-picket-grand-opening-and-ask-invited-guests-not-to-attend/>

Despite the enormous success of House of Payne, Perry has refused to agree to a contract that would give the writers health care, pensions, and residuals. On Tuesday of this week he fired the writers, after warning them some weeks ago that they should "be careful about pushing the WGA deal or you could be replaced."

Tyler Perry Sued for TEMPTATION MOVIE SCRIPT

<http://www.christianpost.com/news/tyler-perry-sued-writer-claims-temptation-a-rip-off-of-his-script-video-94814/>

Tyler Perry Sued for GOOD DEEDS MOVIE SCRIPT (he got away with this one-some how)

<http://www.examiner.com/article/tyler-perry-sued-over-good-deeds-film-script-his-other-controversies>

Tyler Perry Sued For SKANK ROBBER'S MOVIE

http://www.starpulse.com/news/index.php/2011/12/29/jamie_fox_and_tyler_perry_sued_by_inm

Tyler Perry Sued For Copyright Infringement for use of SONG on his TV SHOW

<http://www.tmz.com/2010/02/04/tyler-perry-sued-over-a-song-about-the-devil/>

In 2010, Johnny Tyrone Stringfield accused Perry of "revamping" his gospel song on TBS sitcom "Meet the Browns." The song (allegedly written in 2008) appeared on Tyler's show the following year.

Tyler Perry SUED for DIARY OF A MAD BLACK WOMAN

<http://www.dallasblack.com/entertainment/perrysuedoverdiarymadblackwoman>

RECAP: "LAWSUIT was FILED 21MAY2007, on behalf of DONNA WEST, who is a Texas Resident according to court documents. Ms. WEST's Attorneys claim Perry's film, "Diary of a Mad Black Woman" was "copied largely from the plaintiff's copyrighted script." Ms. WEST is suing Perry individually, as well as Tyler Perry Company Inc. and Lions Gate Entertainment Inc, reports The Marshall News Messenger."

AND HERE HE GOES AGAIN... (Where there's smoke –there's fire!)

The Plaintiff is very aware of my use of the mark, this is why he must be forced to testify, because he had the proof in his own possession, and this is what sparked his interest in securing the mark in the first place. He just never suspected that a small person like myself in the industry would have actually had enough business acumen, to take legal steps to protect their interests as I did, such as filing for the trademark, and registering the show with Writer's Guild, and Copyright Office. That's why he filed for my mark, and then was shocked that my application proceeded his. Most small people in this industry don't always take care of the legal matters until its too late, but trying to be smart, and was trying my best to NOT TO BE A VICTIM of people like him.

Contrary to the Plaintiff's attorney's denial, Tyler Perry, along with the other witnesses I always intended to depose, were clearly listed in my Pre-Trial Disclosures. And they included the following:

1)Marlon Campbell - who has actually worked with the Plaintiff and is also a blood relative of Tyler Perry, his cousin actually. He totally agrees with me, says Tyler is so wrong for this, and though he first agreed to provide a written affidavit attesting to his knowledge regarding the case and supporting my position, as a professional in the industry, and as someone who helped facilitate me getting the treatment to Tyler in the first place, he agreed to testify upon my request verbally, on more than one phone conversation. He then agreed to tried to appeal to Mr. Perry in person to stop this case because it was so wrong and unfair, but to know avail. He then mysteriously decided that the only way he would testify is by subpoena, because he doesn't want to deal with Tyler's wrath. Now mysteriously, I can't even get him on the phone, so he will have to be subpoenaed as well.

2) The Word Network – who gave me the distribution deal for the show –which I have in writing. A prime-time time-slot every Friday afternoon, which would have allowed the show to reach 80 MILLION HOUSEHOLDS.

3) Wayne Overstreet- Post Production Company—who helped me to shop the show to major networks is can confirm my use of the mark

4)Kim Kearney - myself

5) Tyler Perry –of course –the owner of the TPS studios, the Plaintiff

Additionally, just this month Tyler Perry donated ONE MILLION DOLLARS to a church youth fund at the Megafast – a huge national church conference. Sounds like a “GOOD DEED” right? But he did it in front of thousands of people and made a big spectacle of it so all the “church people”, his new target demographic, would know that's what he did. As a “supposed Christian” you are supposed to give from your heart and in secret, so God will bless you.

Why is this relevant to this case? Because it goes on to show the Plaintiff's attempt to steal my mark “WHAT WOULD JESUS DO”, over these last 4 plus years, by any means necessary, is sheerly for his campaign to exploit the faith based community for profit. Remember his proposed uses, concerts, tv, radio, film, entertainment? See the video here: <http://thatplum.com/2013/09/04/tyler-perry-laying-hands-on-bishop-td-jakes-donating-1-million-dollars-speaking-in-tongues/>

And while he's showboating his wealth on stage under the auspices of helping the Christian community, behind closed doors all this time, he's been trying everything possible to steal the trademark of a Christian tv show aimed to bring people to Christ. LOOK AT THE HYPOCRACY! And even when use of this mark was offered to him at NO CHARGE by me, just for the sake of peace, and the bigger mission of saving souls, and us both using the mark for TRUE Christian purposes, he still refuses. Why would he refuse if his intentions were pure? Because they are not! He wants my mark for himself strictly for financial gain, because no TRUE CHRISTIAN as he portrayed himself at that event, speaking in tongues, laying hands on a TD Jakes though he's not a minister, would go this far, to block another Christian from doing God's work. That's why I even conceded to share my mark with him, even though I didn't have to, because my intentions have been pure from day one! The plaintiff's intentions are purely greed and exploitation. And I need the board to allow me defend my case to the fullest of my ability. This man obviously doesn't care who he uses, or hurts as long as it makes him money.

There was nothing fraudulent about my application either. Why would I risk that with God's show, again, I clearly stated in my application that if the specimens I provided did not justify use in commerce, that I hereby amend my application to "1B-Intent To Use" and I signed it digitally. So that alone shows my intentions were pure. Normally an examining attorney would make you change your filing status, if the specimens did not support your claim. They do this with applications everyday.

See an example: APPLICATION SERIAL NO. 85270418

In this case the examining attorney explained why their specimen was not acceptable and told the applicant to amend their application to 1B if they could not meet these guidelines.

I had this happen before myself, so that is why I expected the examining attorney to determine if I met "Use In Commerce" guidelines on this application as well, when I submitted my specimens, and I offered to change to 1B in my application to be sure I filed it correctly, if I did not. When he did not amend my application to 1B per my signed statement, I believed I met the requirements for use in commerce since my specimens were valid and approved, and were website printouts w/advertisements in connection with the show as the description below states. So my intentions were always and remain pure, and the Plaintiff's accusation, that I got this mark fraudulently, are unfounded, unfair, and demeaning, and I resent it.

Here's how the examining attorney addressed the same scenario in the following application which is what I would have expected if there were ANY reason to question my USE IN COMMERCE:

APPLICATION SERIAL NO. 85270418 (Under 1A-Use In Commerce)

The specimen is not acceptable because it does not show the applied-for mark used in connection with any of the goods and/or services specified in the application. An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

A specimen for a service mark must show use of the mark "in the sale or advertising of services."

Examples of specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the actual sale or advertising of the services. See TMEP §§1301.04 et seq. If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

In my case, the examining attorney determined my specimens to support 1A Use In Commerce not only when he approved my registration, but even after the cancellation proceeding began. And I offered to have him reverse my application still to 1B, and he said HE STILL stood by my registration as use in commerce. So the fact that the Plaintiff, has the audacity to still challenge this registration at this juncture shows again his ego – and inflate dview of himself to be INVINCIBLE and able to take anything he wants, anytime he wants, and question even the authority of the Trademark Office and Examining Attorney who approved m mark.

I beg you, the board, to EXTEND MY TESTIMONY PERIOD, and give me the opportunity to defend my mark to the fullest extent of the law, and rightfully so, so I can show Tyler Perry & TPS Studios, you will not destroy another person's life and steal another person's creative works, NOT THIS TIME!

Though Mr. Sapphire would have you believe that requesting reasonable extensions of time to defend one's self in a board proceeding are unfair to his plaintiff and prejudiced, it is ironic that he requests extensions as well in board proceedings on behalf of the same client, Tyler Perry, when he finds it necessary and to their own benefit.

See board proceeding #91180218 - [PEI Licensing, Inc.](#) vs. Tyler Perry –where the Victor Sapphire filed FIVE DIFFERENT REQUESTS FOR EXTENSIONS IN ONE CASE on behalf of Tyler Perry. And every one of these extensions, were granted.

The only difference between that case and this one, is that the Plaintiff in that case, PEI Licensing, was fair enough to consent to the extension request when Tyler Perry was the defendant, unlike Mr. Sapphire, Tyler's attorney in my case, in which he fights me at every turn, and tries to prevent due process according to trademark law and give me a fair chance to defend myself. Here's the link to that TTAB proceeding: <http://ttabvue.uspto.gov/ttabvue/v?pno=91180218&pty=OPP> 5 Request for Extension by VICTOR SAPPHIRE on behalf of Tyler Perry.

Additionally, one of their grounds for some of the FIVE extensions they filed in that case, were that the parties were trying to resolve the matter and settle, which is what they finally did, before terminating the case w/o prejudice. But in regards to my case, Mr. Sapphire the same attorney, on two separate occasions, misled me to believe he and his client Tyler Perry, were willing to consider settling the case the had with me as well, and accept my gracious proposal to share the mark, just as recently as August 9, as stated in his own email to me (attached), "your offer is being considered". And once before he did the same, when my entertainment attorney/friend tried to help me, since he knew I did not have counsel, and called him on my behalf to see if they were willing settle this matter amicably and close this case. And both times, Mr. Sapphire "said" the Plaintiff would consider settlement, then he never followed up or gives an answer, leaving me in limbo indefinitely waiting on his reply, which never comes, while he deceitfully continues to file documents with the court to the contrary as if there is no settlement discussion in place and implicating to the board that I am intentionally delaying the proceeding. THIS IS WHAT IS FRAUDULENT in this case, his attempts to deceive and mislead the board and myself with these games.

That is why in my last email to him, I made it clear that if he did not reply with an answer regarding my proposed settlement by a specific date, then he should in turn provide a date that his client, Tyler Perry would be available for deposition. I was trying to avoid be a victim of his bait and switch game again. And again neither responded to the settlement offer, nor offered a date of availability for his client to be deposed.

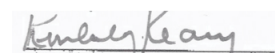
Obviously, the Plaintiff and his counsel think extension requests are reserved for the rich, powerful, and the famous, especially when they are the DEFENDANT and it serves their purposes, but the rest of us little people don't deserve the same mercies. Please don't let these people skew the trademark law and board's discretions unfairly, and hypocritically only to benefit them and position them to steal my mark to which they are not entitled in the first place.

As far as the Plaintiff's attorney trying to make a big deal about when they received the request for the deposition, again it is a smokescreen. Because, I did make a sincere attempt to do this in the beginning of the testimony period, 2 phone calls, and I emailed the plaintiff twice, requesting a date to depose his client (see attached), and even if he never received the first email, which he claims the email address was incorrect, which is a possible typo, I am human. I have been preparing all these documents myself so it's possible a misspelled the email address by one letter.

But no, I did not receive an undeliverable notice as he claims, so I was unaware that the email did not go through. All email systems work differently, and my system did not send a notice back to me that it was not delivered, or I would have just resent it. There was no reason to delay. I definitely want to depose his client, so I would have contacted him again if I didn't think he had received it. BUT...their failure to get the 1st email, still does not negate the fact that when he did receive the 2nd email his response was STILL a refusal for his plaintiff to testify and he then pretended to be considering my offer to settle the matter. So if his intentions were to cooperate and/or consider settlement, if he had received the first email, then why does he have issue with my extension request? Why didn't he just propose a date of availability for his client to testify, and consent to my extension? His contention that the date he received the request is the issue, is TOTALLY IRRELEVANT, because he had no intention of cooperating now, or cooperating then, by either responding to the settlement offer, or providing a date for his client to be deposed. So what difference does the date he received the email matter? It was still within my Testimony Period and he still is NOT COOPERATING. Once again he is attempting to skirt the real issue, he doesn't want Tyler Perry to be deposed, because his testimony, IF HONEST, will only support my position and defense, and expose him for the intellectual thief he is!

I have done EVERYTHING any person can without legal assistance fight a HUGE LAW FIRM and MEGA-MILLIONAIRE Plaintiff can do, and will continue to do so until this case is settled. I just need time for the processor to serve the subpoena on all witnesses, the depositions to be taken, and will then present all testimony w/supporting written documents, that will make a valid defense of my mark and the Plaintiff's egregious attempts to have my mark canceled, unjustly, and unethically, VERY CLEAR.
Respectfully,

Date: 9/13/13



Kimberly Kearney, Respondent

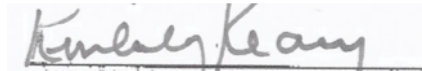
Hollywood South

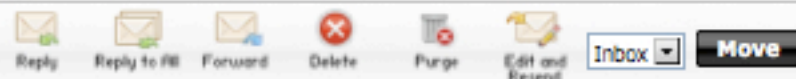
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Van Nuys, CA 91406

Certificate of Service

I hereby Certify on this 13th day of September, 2013, a true and correct copy of the foregoing Defendant's Response To the Petitioner's Response To Defendant's Motion To Extend was served on Petitioner via email to: Petitioner's Attorney, Victor K. Sapphire, Connolly Bove Lodge & Hutz, LLP. to his direct email address: vsapphire@novakdruce.com and that an additional true and correct copy of the same will be served via U.S. Postal mail on the 13th day of September, 2013.

A handwritten signature in cursive script, reading "Kimberly Kean", is written over a horizontal line.

Save Search As: AddRecall AppSearch Results > Message Detail Print

Subject: Settlement Proposal Regarding Cancellation Proceeding #92053298 -For "What Would Jesus Do"
From: <kimk@hollywoodsouthproductions.com> [\(Add as Preferred Sender\)](#)
Date: Fri, Jul 19, 2013 4:28 pm
To: vsapphire@novakdruce.com

Dear Mr. Sapphire,

I am writing you to propose that we arrive at an amenable solution regarding this ongoing cancellation proceeding regarding my trademark for "What Would Jesus Do".

I maintain my resolve to keep this trademark registration, since it is a critical component of my television show.

Though you and/or your client Tyler Perry may see this as just another business coup if you were able to take my mark from me. I must implore you to ask your client to look at this situation a little differently.

This show bearing this mark is not about money, ego, career or anything else for me. If it were only that, I would have walked away from this nightmare battling him through this proceeding long ago.

But this show is about my calling, to spread God's word, and to help bring people to Christ. This is my mission and my duty as a Christian. Your client professes to be a Christian man as well. That is why I cannot understand why he would even attempt to secure this mark after I presented my television show bearing this mark to him in good faith. It is not only unethical, but it is also un-Christianlike. I admired him, looked up to him and trusted that he would be as excited as I was to use this show as platform to save souls, and bring people to Christ.

Additionally, I cannot believe that with all the success he has had and fortune he has made, that he would be more concerned with using this mark for profitable purposes than to try to find a way that we could either work together on this project or agree to some form of sharing the use of the mark for God's purposes not our own.

For me this is not about money or success, only my purpose to use this show for the glory of God as a Christian should. And I am willing to prove that by proposing that either we come together and compromise on a restricted use of the name which I am willing to do. I am will to use the name only for my show, and the shows marketing purposes, and even concede on any uses that would prevent Mr. Perry from using the name for his purposes. I'm not proposing this because I think he will win this action, I am proposing this because I care more about moving forward with God's purpose for the show than having it continue to be legal entangled in this proceeding which has delayed and prevented it from going forward.

There are hundreds of movies with the same titles, songs with the same titles, there is no reason that we cannot find a resolution to share use this mark if we both have pure intentions. To use this type of mark for any other reason than for the glory of God would be hypocritical, go against any level of true Christian values, and would only show that the intent is to exploit a Christian title only for personal gain and this is just blasphemist!

My research tells me, that according to the trademark guidelines, there is a way to have my mark registration amended w/restricted use, and I'm ok with that as long as it allows me to do God's will.

I am also willing to consider any proposals you or Mr. Perry may have as to how we can resolve this situation amicably, outside of relinquishing my use of the name for my show. Everything in my application was honest, my intentions were honest, and the grounds upon which you are attempting to cancel the mark are unfounded, and I still feel can be defended with God's help.

And even though you may feel you will win this case because my admissions were deemed accepted, only due to a technicality, my lack of understanding about the due date, I have more than enough evidence to show they are invalid and that your client trying to take the name is unethical, a breach of trust, and the board will have to consider that during trial.

Also, I am prepared to depose every witness that I have listed for you in my pre-trial disclosures, provide plenty of evidence to support my position, and any witness who refuses to cooperate I will have subpoenaed, including Mr. Perry. I will also have the remainder of this trial covered by several national media outlets, believe me they would be very interested. But I have avoided that though advised by others to go that route, because I don't want to created mess or confusion around God's work, or problems for myself or your client. But at this point if we can't work this out, I don't have any choice but have it also considered by the court of public opinion.

Subject: [DEPOSITION SCHEDULING REQUEST FOR TYLER PERRY- RE: CANCELLATION PROCEEDING -#92053298](#)

From: <kimk@hollywoodsouthproductions.com> ([Add as Preferred Sender](#))

Date: Wed, Aug 07, 2013 4:19 pm

To: victor.sapphire@novakdruce.com, trademarks@cblh.com, vsapphire@cblh.com, epritsker@cblh.com

Dear Mr. Sapphire,

I am hereby making a 2nd request, for you to please provide available dates for your client Tyler Perry to be deposed in regards to the CANCELLATION PROCEEDING - #92053298 for "WHAT WOULD JESUS DO".

A previous email proposing a resolution was sent to you on July 19, 2013, which also included a request for available dates for deposition of your client, should he not accept or be willing to consider the settlement offer.
You can see a copy of that email pasted below.

Time is of the essence here since there is only a short window of time, only 2 weeks left for my testimony period, so I would like to schedule this deposition no later than August 16th.

I await your reply on or before this coming Friday, August 9th, 2013. I would appreciate your client's voluntary cooperation, so we can finally resolve this matter. We would hope it is not his or your intention to delay, or to obstruct my right to take testimony per the trademark rules, in an effort to defend my position in this proceeding.

Sincerely,

/Kim Kearney/

COPY OF PREVIOUS EMAIL PROPOSING SETTLEMENT & REQUEST AVAILABLE DATES FOR DEPOSITION

Dear Mr. Sapphire,

I am writing you to propose that we arrive at an amenable solution regarding this ongoing cancellation proceeding regarding my trademark for "What Would Jesus Do".

I maintain my resolve to keep this trademark registration, since it is a critical component of my television show.

Subject: RE: DEPOSITION SCHEDULING REQUEST FOR TYLER PERRY- RE: CANCELLATION PROCEEDING -#92053298
From: Victor Sapphire <Victor.Sapphire@novakdruce.com> (Add as Preferred Sender)
Date: Fri, Aug 09, 2013 4:30 pm
To: "kimk@hollywoodsouthproductions.com" <kimk@hollywoodsouthproductions.com>

Dear Ms. Kearney:

Thank you for your message. I have confirmed with my firm's docketing and IT departments that we have not received any "previous" messages from you, including the message purportedly sent July 19, 2013. There is no header information indicating the "previous email" identified below was actually transmitted on July 19 or any other time before August 7. Therefore, we consider it a "first" and not second request. Please be reminded that there is no agreement between the parties concerning service via email, nor have we consented to such service.

This cancellation proceeding has not "delayed and prevented [your show] from going forward." On the contrary, you alleged use and your registration was issued years before this cancellation proceeding was initiated. Your statement that the show has not "gone forward" is a further admission that the show does not exist except perhaps as an undeveloped idea or concept, and that your Statement of Use was thus fraudulent. This proceeding is about the validity of your federal trademark registration. It is clear the registration is not valid.

You will appreciate that the Petitioner in this action is Tyler Perry Studios, LLC, not Mr. Perry individually. Your intention to depose Mr. Perry, who does not possess knowledge relevant to the issues in this proceeding, is merely for the purpose of harassment. He is not an appropriate witness.

With regard to your settlement offer, it is our understanding that you are proposing a form of coexistence with Tyler Perry Studios with regard to use of the subject mark. Your offer is being considered.

Cordially,

Victor Sapphire

Victor K. Sapphire
Legal Solutions for Strategic Brand Protection
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